

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

VIVIAN N. CARD,

Defendant-Appellee.

UNPUBLISHED

November 21, 1997

No. 202376

Recorder's Court

LC No. 96-009608

Before: Hoekstra, P.J., and Wahls and Gribbs, JJ.

PER CURIAM.

The prosecution appeals as of right from an order of Detroit Recorder's Court granting defendant's motion to quash the information, and dismissing a charge of second-degree murder, MCL 750.317; MSA 28.549. We reverse.

The prosecution argues that the trial court abused its discretion in quashing the information and dismissing the charges against defendant. We agree. When considering a motion to quash and determining whether a defendant should have been bound over on preliminary examination, the trial court applies a clear abuse of discretion standard of review. *People v Oliver*, 170 Mich App 38, 42-43; 427 NW2d 898 (1988). This Court then reviews the trial court's decision under an abuse of discretion standard. *Id.* at 43. The magistrate is not required to find guilt beyond a reasonable doubt, but some evidence on each element of the crime charged must be presented, or evidence must be presented from which the elements of the offense can reasonably be inferred. *Id.* Where the testimony both supports and negates an element of the crime charged, the question is one of fact for the finder of fact. *Id.*

Here, defendant was charged with the crime of second-degree murder. The elements of second-degree murder are:

(1) a death, (2) caused by an act of the defendant, (3) absent circumstances of justification, excuse, or mitigation, (4) done with an intent to kill, an intent to inflict great bodily harm, or an intent to create a very high risk of death with the knowledge that the

act probably will cause death or great bodily harm. [*People v Bailey*, 451 Mich 657, 669; 549 NW2d 325 (1996).]

Because defendant admitted in her statement to stabbing the victim, as a result of which he died, neither party contests whether elements one and two are met. Defendant successfully challenged the bind-over in the lower court on the grounds that the evidence at the preliminary examination established that defendant acted in self-defense.

Self-defense requires an honest and reasonable belief by the defendant that his life is in imminent danger or that there is a threat of serious bodily harm. *People v George*, 213 Mich App 632, 634-635; 540 NW2d 487 (1995). In the present case, the only evidence presented at the preliminary examination was defendant's statement, which was read verbatim into the record by the prosecutor. Defendant's explanation for stabbing the victim was that she did so after the victim grabbed her by the neck. While this arguably lends some support to defendant's claim of self-defense, there is no other evidence in her statement to indicate whether defendant honestly and reasonably believed herself to be in great danger. For example, defendant's statement does not indicate whether she believed the victim planned to attack her again, even though he was in the bedroom packing his clothes and their initial argument seemed to have ended, or whether, despite the fact that she had been able to extricate herself from their earlier tussle, she believed that, should the victim come at her again, she would not be able to do the same, or whether the victim's presence in her apartment after their initial argument had ended caused her to fear for her safety. Therefore, we conclude that whether defendant acted reasonably under the circumstances is a question of fact which should have been left for the jury to decide. *George, supra*, at 635.

Because we have determined that the trial court abused its discretion in quashing the information, we need not address the other issue raised by the prosecutor concerning the failure of the trial court to address the lesser charge of manslaughter.

Reversed and remanded for further proceedings in accordance with this opinion.

/s/ Joel P. Hoekstra
/s/ Myron H. Wahls
/s/ Roman S. Gribbs